



THE CITY OF SAN DIEGO

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## OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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**Date Issued:** April 10, 2015

**IBA Report Number:** 15-10

**Charter Review Committee Date:** April 16, 2015

**Item Number:** 3

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# Suggestions to Consider Amending Charter Section 77a to Allow Funds to Additionally Be Used for Capital Maintenance in Balboa Park

## BACKGROUND

On November 6, 1934, City voters approved a ballot measure assuming the duty to pay a specified property tax to be used “exclusively for the maintenance in Balboa Park of zoological exhibits.” The property tax was established to be 2 cents for every \$100 of the assessed valuation of real and personal property within the City. This property tax requirement is currently codified in Section 77a (Provisions for Zoological Exhibits) of the City Charter.

There have been repeated suggestions to consider amending City Charter Section 77a dating back to 2004. Suggestions have called for Section 77a to be amended to allow the resulting tax proceeds to be used for the maintenance of exhibits and infrastructure in Balboa Park. Those suggesting the amendment also requested that zoological exhibits continue to be eligible for Section 77a funds along with Balboa Park infrastructure and exhibits.

In response to Council President Lightner’s request for possible Charter amendments that could be discussed and considered by the Charter Review Committee, the IBA submitted a memorandum dated February 2, 2015 making several suggestions for Committee consideration. One of those suggestions echoed previous suggestions (from public individuals and City staff) to consider amending Section 77a to additionally allow funds to be used for Balboa Park exhibit and infrastructure needs. Since our office submitted this suggestion, we have had an opportunity to further discuss the legality of the suggestion with the Office of the City Attorney and we now understand this suggestion is not legally feasible.

**OFFICE OF THE INDEPENDENT BUDGET ANALYST**

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# FISCAL/POLICY DISCUSSION

## **Rationale for the Suggestion to Consider Amending Section 77a**

For several years, our Office has called attention to a growing backlog of City infrastructure needs. While the total magnitude of these needs is still being assessed, it is fair to say the total amount exceeds \$2 billion and covers infrastructure needs ranging from streets and sidewalks to parks and public safety facilities. Given limited funding and staff capacity to complete projects, the City will need to carefully prioritize which projects receive funding and attention. In this environment, park improvements are forced to compete with other high priority needs like fire stations and street improvements.

In 2008, the Balboa Park Committee submitted a report to the City indicating that an initial assessment of capital and infrastructure needs in Balboa Park totaled \$238 million. In 2013, the manager of a Balboa Park museum showed a photographic PowerPoint presentation of infrastructure needs in Balboa Park to a local reporter. The photos showed cracks in buildings, heavy objects that had fallen from deteriorating building facades, pest and water intrusions in Balboa Park structures, and other needs. More recently, it was reported that Balboa Park's infrastructure needs are estimated to be closer to \$300 million.

The San Diego Zoo's origin is directly linked to Balboa Park. The San Diego Zoo grew out of exotic animal exhibitions abandoned after the 1915 Panama-California Exhibition. A permanent tract of land in Balboa Park was set aside for the Zoo in August 1921. In 1932, the County Assessor taxed the Zoo \$100,000 and attempted to sell the animals and the property at auction when the Zoo defaulted on the tax. There were no bidders on the Zoo at the auction so the Zoo was declared property of the State; however, the State refused to accept the Zoo and the City Council declared the auction illegal. It is likely that the financial challenges of the Zoo at the time led zoo enthusiasts to request a special election to consider a property tax for zoological exhibits in 1934.

Today the Zoo is a world renowned organization. The Zoological Society of San Diego does business as San Diego Zoo Global (SDZ Global). SDZ Global operates the San Diego Zoo, the San Diego Safari Park and world-wide conservation and research programs. SDZ Global's Combined Financial Statements report total assets of approximately \$451 million in 2013 and unrestricted revenues of approximately \$269 million (comprised of admissions, memberships, auxiliary activities, contributions, grants, etc.). This is not to say that the Section 77a funding is not important to annual Zoo operations, rather to note that the financial condition of the Zoo is much different today than it was in 1934.

Given the financial condition of the Zoo and capital needs of Balboa Park today, it seemed reasonable to suggest the Committee reconsider the use of Charter Section 77a funds (estimated to be approximately \$11.7 million in FY 2016). We believe most citizens consider Balboa Park and the Zoo to be complementary jewels of the City. With this assumption in mind and without raising existing property taxes, we thought voters might like the opportunity to consider broadening the applicable use of Section 77a funds to additionally include needed improvements in Balboa Park.

## **Feedback from the Office of the City Attorney**

Subsequent to the submission of our February 2<sup>nd</sup> memorandum, the IBA learned the Office of the City Attorney had reviewed previous suggestions that Section 77a be amended to more broadly allow funds to be used for Balboa Park maintenance and other purposes. In 2004, Mr. John Stump submitted three ballot proposals to the Committee on Rules, Finance and Intergovernmental Relations suggesting different amendments to Section 77a. In response, the Committee requested legal analysis of Mr. Stump's proposals. The Office of the City Attorney issued a memorandum on June 22, 2004 providing the requested legal analysis to the Committee (Attachment 1).


In the 2004 memorandum, Deputy City Attorney Richard Duvernay notes that Charter Section 77a went into effect long before the 1978 passage of Proposition 13, which amended the California Constitution to substantially limit the collection of taxes based on the assessed value of real property (known as "ad valorem" taxes). Ad valorem taxes are based on a fixed percentage of the assessed value of real and personal property. The California Constitution prohibits the levy of ad valorem taxes in excess of the 1% maximum imposed by Proposition 13. Because Section 77a went into effect prior to voter approval of Proposition 13, it was "grandfathered" in as a permissible ad valorem tax.

As written, Section 77a requires that the resulting property tax proceeds be used exclusively for the maintenance in Balboa Park of zoological exhibits. In 2004, Deputy City Attorney Duvernay concluded that any proposed amendment to broaden or change the use of Section 77a funds would constitute the adoption of a new ad valorem tax. Because the City already levies the maximum 1% property tax, it is prohibited from adopting any new ad valorem taxes. The IBA has discussed the 2004 memorandum with current Deputy City Attorney Brant Will, who concurs with Mr. Duvernay's conclusion that any change in the use of Section 77a funds would constitute a new ad valorem property tax above the 1% limit and therefore be unconstitutional.

## **CONCLUSION**

The City has limited funds to address a growing backlog of capital and maintenance needs in Balboa Park. In an effort to develop a dedicated funding source to help address these needs, there have been repeated suggestions since 2004 to consider amending City Charter Section 77a. However, a 2004 memorandum issued by the Office of the City Attorney provides that any proposal to broaden the use of Section 77a funds would constitute a new ad valorem property tax above the 1% limit and therefore be unconstitutional. The IBA has revisited the legal analysis in the 2004 memorandum with current Deputy City Attorney Brant Will, who concurs with its conclusion.

  
Jeff Kavar  
Deputy Director

  
APPROVED: Andrea Tevlin  
Independent Budget Analyst

Attachments: 1. Office of the City Attorney Memorandum dated June 22, 2004

**Office of  
The City Attorney  
City of San Diego**

**MEMORANDUM  
MS 59**

**(619) 533-5800**

**DATE:** June 22, 2004

**TO:** The Committee on Rules, Finance and Intergovernmental Relations

**FROM:** City Attorney

**SUBJECT:** Analysis of John Stump's Ballot Proposals

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On June 4, 2004, the City Clerk provided to Bill Baber, the Rules Committee Consultant, three ballot proposals that had been submitted by John Stump pursuant to Council Policy 000-21. This Council Policy allows members of the public to submit ballot proposals for review by the Rules Committee, which may reject the proposal or approve it for consideration by the full City Council.

The City Attorney's Office has been asked to provide a legal analysis of Mr. Stump's proposals. The three proposals may be summarized as follows:

**Proposal One:** This proposal is entitled "Proposed Quality Affordable Housing Amendment." If passed, this proposition would amend San Diego Charter section 77a to the extent that revenues collected pursuant to section 77a would no longer be used for the maintenance of Balboa Park zoological exhibits, but would instead be used for the "maintenance in City of quality affordable housing." The proposed language would also amend section 77a's second paragraph, which currently permits the City Council to enter into contracts relating to the maintenance of Balboa Park zoological exhibits. As amended, the second paragraph of proposed section 77a would allow the City Council to enter into contracts relating to the maintenance of quality affordable housing.

**Proposal Two:** This proposal is entitled "Alternative Quality Affordable Housing Amendment." If passed, this proposition would amend San Diego Charter section 77a to the extent that revenues collected pursuant to section 77a would no longer be used for the maintenance of Balboa Park zoological exhibits, but would instead be used for the "maintenance in City of quality affordable housing." The proposed language would also delete section 77a's second paragraph, which permits the City Council to enter into contracts relating to the maintenance of Balboa Park zoological exhibits.

**Proposal Three:** This proposal is entitled "Second Ballot Proposition for Maintenance." If passed, this proposition would amend San Diego Charter section 77a to the extent that revenues collected pursuant to section 77a would no longer be used for the maintenance of Balboa Park

Rules Committee

June 22, 2004

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zoological exhibits, but would instead be used for “maintenance.” The proposed language does not identify any particular types of “maintenance.” The proposed language would also delete section 77a’s second paragraph, which permits the City Council to enter into contracts relating to the maintenance of Balboa Park zoological exhibits.

The revenues at issue in Charter section 77a are obtained by that section’s levy of “not less than two cents (\$0.02) on each one hundred dollars (\$100.00) of assessed valuation of the real and personal property within the City.” The language in section 77a went into effect in 1941, well before the 1978 passage of Proposition 13, which amended the California Constitution to substantially limit the collection of taxes based on the assessed value of real property. Article XIII A of the California Constitution states, in part, at section 1(a): “The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property.” At that time, Article XIII A contained an exception in section 1(b): “The limitation provided for in subdivision (a) shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges *on any indebtedness approved by the voters prior to the time this section becomes effective.*” (emphasis added) Because Charter section 77a created an indebtedness approved by the voters prior to 1978, its imposition of an ad valorem tax was “grandfathered” into permissible coexistence with the limitations of Proposition 13. 1984 Op. City Att’y 55.

Under the California Constitution, property tax rates may not exceed 1 percent of the property's market value and valuations may not grow by more than 2 percent per year unless the property is sold. The City’s voters may no longer approve, even by Charter amendment, a property tax that exceeds these limitations.

All of Mr. Stump’s proposals seek to raise the property tax rate. Although his proposals do little more than replace “the zoo” with “affordable housing,” these are significant differences. The City’s voters did not approve a property tax earmarked for affordable housing in 1941, so any new property tax that does earmark for such purposes is not entitled to the “grandfathered” status currently enjoyed by section 77a. Eliminating the property tax for zoo purposes does not create an opportunity for a new property tax to take its place. For these reasons, Mr. Stump’s proposals would impose a property tax that is unlawful under the California Constitution.

CASEY GWINN, City Attorney

By

Richard A. Duvernay  
Deputy City Attorney

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